

House Study Bill 514 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ANDERSON)

A BILL FOR

1 An Act relating to the arrest of a material witness in a felony
2 criminal case.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 804.11, Code 2011, is amended to read as
2 follows:

3 **804.11 Arrest of material witness.**

4 1. When a A law enforcement officer who has probable cause
5 to believe that a person is a necessary and material witness
6 to a felony and that such person might be unavailable for
7 ~~service of a subpoena~~ attendance at any deposition, proceeding,
8 hearing, or trial involving a felony, the officer may arrest
9 such person as a material witness with or without an arrest
10 warrant.

11 2. At the time of the arrest, the law enforcement officer
12 shall inform the person of the following:

13 ~~1. a.~~ The officer's identity as a law enforcement officer;
14 ~~and.~~

15 2. b. The reason for the arrest which is that the person is
16 believed to be a material witness to an identified felony and
17 that the person might be unavailable for ~~service of a subpoena~~
18 attendance at a deposition, proceeding, hearing, or trial.

19 Sec. 2. Section 804.23, Code 2011, is amended to read as
20 follows:

21 **804.23 Initial appearance of arrested material witness before**
22 **magistrate.**

23 1. The officer shall, without unnecessary delay, take the
24 person arrested pursuant to section 804.11 before the nearest
25 or most accessible magistrate to the place where the arrest
26 occurred.

27 2. At the appearance before the magistrate, the law
28 enforcement officer shall make a showing to the magistrate, by
29 sworn affidavit, that probable cause exists to believe that
30 a person is a necessary and material witness to a felony and
31 that such person might be unavailable for ~~service of a subpoena~~
32 attendance at any deposition, proceeding, hearing, or trial
33 involving a felony. The Upon such a showing, the magistrate
34 may order the person released pursuant to section 811.2 if
35 the magistrate finds that such release will reasonably assure

1 the attendance of the material witness at any deposition,
2 proceeding, hearing, or trial.

3 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
4 immediate importance, takes effect upon enactment.

5 EXPLANATION

6 This bill relates to the arrest of a material witness in a
7 felony criminal case.

8 The bill provides that a law enforcement officer who
9 has probable cause to believe that a material witness to a
10 felony might be unavailable for attendance at any deposition,
11 proceeding, hearing, or trial, may arrest the person as a
12 material witness. Current law requires the law enforcement
13 officer to have probable cause to believe a material witness to
14 a felony might be unavailable for service of a subpoena prior
15 to arresting the material witness.

16 The bill requires the law enforcement officer, without
17 unnecessary delay, to take the arrested material witness
18 before a judge and make a showing that probable cause exists
19 to believe the material witness might be unavailable for
20 attendance at any deposition, proceeding, hearing, or trial.
21 Upon a showing that probable cause exists, the judge may order
22 the material witness released pursuant to Code section 811.2,
23 if the magistrate finds such release will reasonably assure
24 the attendance of the material witness at any deposition,
25 proceeding, hearing, or trial.

26 If a material witness is released and subsequently fails to
27 appear, the person commits a simple misdemeanor pursuant to
28 Code section 811.2(8).

29 A simple misdemeanor is punishable by confinement for no
30 more than 30 days or a fine of at least \$65 but not more than
31 \$625 or by both.